

1 HONORABLE RICHARD A. JONES

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7 IN THE UNITED STATES DISTRICT COURT
8 FOR THE WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 MASSAMBA DJITTE,

11 Plaintiff,

12 vs.

13 DELTA GLOBAL SERVICE,

14 Defendant.
15

CV No. 2:19-cv-00480-RAJ

**~~PROPOSED~~ ORDER DENYING
MOTION TO COMPEL**

16 This matter is before the Court on Plaintiff Massamba Djitte's motion to compel.
17 Dkt. # 19. For the following reasons, Plaintiff's motion is **DENIED**.

18 On December 26, 2019, less than two weeks before the close of discovery,
19 Plaintiff attempted to subpoena witness Wabi Wagita to appear for a deposition on
20 January 2, 2020. Plaintiff initially asked Defendant Delta Global Services to schedule the
21 deposition but was informed that Ms. Wagita was no longer an employee of the
22 Defendant. Dkt. # 21 at 3. Plaintiff then proceeded to email a copy of the subpoena to
23 Ms. Wagita seven days before the proposed date of the deposition. Plaintiff represents
24 that Ms. Wagita did not appear for the deposition on January 2, 2020. On January 6,
25 2020, Plaintiff filed the instant motion to compel Ms. Wagita's deposition. Dkt. # 19.

1 There are a number of issues with Plaintiff's request. First, the Court cannot order
2 Ms. Wagita to comply with a subpoena that was never properly served. Under Fed. R.
3 Civ. P. 45(b)(1), deposition subpoenas must be personally served by a non-party. Here, it
4 appears that Plaintiff emailed the subpoena to Ms. Wagita directly. Dkt. # 21 at 2. This
5 is improper.

6 In addition, Plaintiff's motion is untimely. This Court's scheduling order clearly
7 requires discovery motions to be noted "no later than the Friday before discovery closes"
8 pursuant to Local Rule 7(d)(3). Dkt. # 15. In this case, discovery motions should have
9 been noted by January 3, 2020. Plaintiff's motion was noted for January 24, 2020, three
10 weeks *after* the deadline and just days before the dispositive motion deadline.

11 Where a motion is untimely, the Court must consider if there is good cause
12 justifying the delay. See Fed. R. Civ. P. 16(b)(4) ("A schedule may be modified only for
13 good cause and with the judge's consent."); *Noyes v. Kelly Servs.*, 488 F.3d 1163, 1174 n.
14 6 (9th Cir. 2007). Here, Plaintiff's only justification for the delay is his conclusory
15 assertion that opposing counsel are "uncooperative" and did not help to make Ms. Wagita
16 available for deposition. Dkt. # 19 at 1. As previously discussed, however, Ms. Wagita
17 is not an employee of the Defendant. As such, Defendant was under no obligation to
18 make her available for a deposition.

19 The Court appreciates that Plaintiff is proceeding *pro se*, but this does not absolve
20 him of his obligation to comply with Court deadlines and other procedural requirements.
21 *King v. Atiyeh*, 814 F.2d 565, 567 (9th Cir. 1987) (*pro se* litigants must follow same rules
22 of procedure that govern other litigants). This Court's scheduling order is not a
23 suggestion and Plaintiff's failure to abide by it will not be tolerated.

24 In these days of heavy caseloads, trial courts in both the federal and state
25 systems routinely set schedules and establish deadlines to foster the efficient
treatment and resolution of cases. Those efforts will be successful only if the

1 deadlines are taken seriously by the parties, and the best way to encourage
2 that is to enforce the deadlines. Parties must understand that they will pay a
3 price for failure to comply strictly with scheduling and other orders, and that
4 failure to do so may properly support severe sanctions and exclusions of
evidence.

5 *Wong v. Regents of the Univ. of Cal.*, 410 F.3d 1052, 1060 (9th Cir. 2005).

6 Accordingly, Plaintiff's motion to compel is **DENIED**. Dkt. # 19.

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8 DATED this 2nd day of April, 2020.

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11 The Honorable Richard A. Jones
12 United States District Judge
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